

***United States Court of Appeals
for the Second Circuit***



APPELLEE'S BRIEF

75-1123

To be argued by
BANCROFT LITTLEFIELD, JR.

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 75-1123

UNITED STATES OF AMERICA,

Appellee,

—v.—

FRANCISCO GUINART,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES OF AMERICA

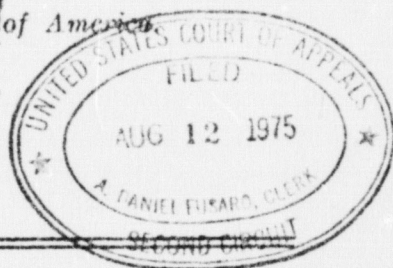
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UNITED STATES OF AMERICA,

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—v.—

FRANCISCO GUINART,

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BRIEF FOR THE UNITED STATES OF AMERICA

Preliminary Statement

Francisco Guinart appeals from judgments of conviction entered on February 28, 1975 in the United States District Court for the Southern District of New York after his pleas of guilty before the Honorable Lee P. Gagliardi, United States District Judge for the Southern District of New York, to an information, 74 Cr. 1066, and an indictment, 75 Cr. 98, charging violations of the Federal Narcotics Laws.

Indictment 75 Cr. 98, originally filed on June 23, 1970 in the Eastern District of New York, charged Guinart and six other defendants in one count with conspiracy to receive, conceal, buy, sell and facilitate the transportation of cocaine, in violation of Title 21, United States Code, Sec-

tions 173 and 174.* On January 30, 1975 the indictment as to Guinart was transferred to the Southern District of New York for plea and sentence pursuant to Rule 20, Fed. R. Crim. P. Information 74 Cr. 1066, filed in the Southern District of New York on November 13, 1974, charged Guinart in one count with conspiracy to import into the United States, sell, possess with intent to distribute and distribute approximately 180 kilograms of cocaine between 1968 and March, 1972, in violation of Title 21, United States Code, Sections 173, 174, 812, 841(a)(1), 841(b)(1)(A), 846, 952(a), 960(a)(1), 960(b)(1) and 963.**

On October 2, 1974, Guinart moved in the District Court before Judge Gagliardi for a writ of habeas corpus

* The criminal number assigned to the indictment in the Eastern District of New York was 70 Cr. 408. Guinart was named in the indictment as Pedro Rojas, a/k/a Jesus Francisco Duinard-Moral. Five of the other defendants were found guilty on January 25, 1971 after a non-jury trial before the Honorable Orrin G. Judd, United States District Judge for the Eastern District of New York and sentenced as follows: Gino Fantuzzi—15 years imprisonment; Carmen Lopez—5 years imprisonment; Claudine Lieros—20 years imprisonment and a \$5,000 fine; Sergio Jaramillo—15 years imprisonment. The conviction of James Christian was reversed on appeal. The remaining defendant Oscar Letelier, a/k/a Manuel Villaseca, was expelled from Chile and brought to the United States with Guinart in December, 1973, subsequently pleaded guilty and was sentenced to 7 years imprisonment.

** Guinart was also indicted in the Southern District of New York in Indictment 73 Cr. 1094 filed on December 4, 1973, which charged Guinart and five other defendants in one count with conspiracy to import into the United States, sell, possess with intent to distribute, and distribute cocaine in violation of Title 21, United States Code, Sections 173, 174, 812, 841(a)(1), 841(b)(1)(A), 846, 952(a), 960(a)(1), 960(b)(1) and 963. After Guinart pleaded guilty to Information 75 Cr. 1066, the Government filed orders of *nolle prosequi* as to him on Indictment 73 Cr. 1094 and a superseding indictment 73 Cr. 1098, filed on December 6, 1975, which charged Guinart with conspiracy and a substantive count of distribution of cocaine arising out of the same facts as charged in Indictment 73 Cr. 1094.

returning him to his "status quo ante" and for an order of the Court divesting itself of jurisdiction over him on the ground that he was brought to the United States in violation of his constitutional rights as set forth in *United States v. Toscanino*, 500 F.2d 267 (2d Cir.), *motion for rehearing denied*, 504 F.2d 1380 (1974). After oral argument on the motion on October 8, 1974, Judge Gagliardi determined that Guinart had not made a sufficient factual showing to require an evidentiary hearing and denied the motion.

On November 13, 1974, Guinart pleaded guilty to Information 74 Cr. 1066 after a stipulation was entered into between Guinart and the Government and approved by Judge Gagliardi, preserving Guinart's right to appeal Judge Gagliardi's denial of the *Toscanino* motion. On February 28, 1975, Guinart pleaded guilty before Judge Gagliardi to Indictment 75 Cr. 98 which had been transferred to the Southern District of New York pursuant to Rule 20, Fed. R. Crim. P., with a similar stipulation filed and approved preserving his right to appeal the denial of the *Toscanino* motion.

On February 28, 1975 Guinart was sentenced by Judge Gagliardi to concurrent terms of five years imprisonment on Information 74 Cr. 1066 and Indictment 75 Cr. 98. Guinart is presently serving his sentence.

Statement of Facts

Francisco Guinart was brought to the United States from Chile on December 5, 1973. Thereafter, prior to pleading guilty to the charges against him in the Southern District of New York, Guinart filed a motion pursuant to *United States v. Toscanino*, *supra*, requesting that the District Court divest itself of jurisdiction over him. The motion papers consisted of an affidavit by Guinart describing the circumstances of his arrest in Chile, his treatment in Chile, legal efforts made by him to obtain his release in

Chile, and his transfer to the United States. The Government in response filed an affidavit of Charles W. Cecil, Jr. a Special Agent for the Drug Enforcement Administration, ("DEA") assigned since 1972 to the Santiago, Chile, Office of DEA. On October 8, 1974 after oral argument, Judge Gagliardi denied the motion without an evidentiary hearing on the ground that Guinart's affidavit in support of the motion contained no allegation of participation by United States agents in the mistreatment in Chile of which he complained, but raised only the issue as to whether his expulsion from Chile was legal under Chilean law, an issue which the District Court did not have authority to review.

The affidavits and oral argument on the motion are not lengthy and are hereinafter set forth verbatim for the Court's convenience:

1. Guinart's Affidavit in Support of the Motion

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

73 Cr.

UNITED STATES OF AMERICA

—against—

FRANCISCO GUINART,

Defendant.

PETITION FOR A WRIT OF HABEAS CORPUS

Petitioner, **FRANCISCO GUINART**, pursuant to Title 28, United States Code, 2241, 2242, et seq., and the Constitution of the United States, respectfully alleges and states:

1. I, FRANCISCO GUINART, am presently under Indictment in the United States District Court for the Southern District of New York and the United States District Court for the Eastern District of New York, for alleged violations of the Federal Narcotics Laws and am presently incarcerated and in the custody of the Warden of the Federal House of Detention, West Street, New York, New York, in lieu of bail on both of the above mentioned Indictments.

2. I was brought into this Country contrary to law, by force and against my will, with the complicity and under the direction of Federal Agents of the United States Government, as is set forth more fully in the following paragraphs.

3. On about October 28, 1973, I was arrested by several Chilean officers and one officer whom I believed to be American. I was informed that I was being charged with various violations of law relating to drugs.

4. I was forcefully taken to a police station in Concon, which is a community in Vina Del Mar—a small town in Chile. At Concon, I was handcuffed and beaten with fists and the back of machine guns. I did not receive any medical or hospital treatment while at Concon.

5. From Concon I was taken to Santiago, the Capital of Chile, where I was put in a detention cell at a police station. In Santiago I was again beaten and tortured by the use of electric shock treatment applied to my body. These beatings were administered by agents of the Chilean Government.

6. My attorney in Santiago then obtained a Writ of Habeas Corpus to the Chilean Supreme Court. I was brought from the detention cell at a police station to the Supreme Court for a hearing. Thereafter I was placed in the Santiago prison. I was placed in solitary confinement

for five days and the little food which I was given was very bad and I could not eat it. At this time there was a story in all of the papers that the American Government had at first sought my extradition but then had withdrawn their request for extradition. (Copies of those newspaper articles can be obtained by my relatives in Chile if the Court wishes to see them.)

7. Soon thereafter your Petitioner, along with other prisoners was taken to a concentration camp. No explanation was given to us as to where we were going or why we were being moved. On the way to the camp I was made to wear a hood so that I could not tell the location of the camp.

8. We remained in that camp for about one full day and thereafter at midnight we were awakened and immediately taken to Pudahuel Airport in Santiago, Chile. We were told that anyone attempting to escape or to disobey orders would be shot. At the airport in Chile there were two American officers who appeared to be in charge and these two officers eventually introduced themselves to us on the plane. There were nine prisoners put aboard the plane, seven Chileans, one Argentinian and one female Brazilian. It was December 4, 1973 when we began the flight from Chile on Lan Chilean Airlines. According to a story in the Chilean newspapers, the plane was chartered and paid for by the American Government. (Again, this article can be obtained.)

9. On the plane, in addition to the two American officers, there were nine Chilean officers. The Americans gave the orders on the plane and one of them spoke to us in Spanish. The flight took about twelve hours and when we landed at Kennedy Airport there were many Federal Agents waiting for us. One Federal Agent was assigned to each prisoner and after that I never saw the Chilean officers again.

10. Your Petitioner along with the other prisoners was photographed and fingerprinted at the airport and then later we were taken to see an Assistant United States Attorney in Brooklyn whose name I believe was Mr. Fried.

11. Your Petitioner has been informed that I was not extradicted (sic) pursuant to Treaty, but that your Petitioner was allegedly expelled from Chile by order of that Government. Even if this is true I was entitled to freely choose the country to which I would be sent. However, I was never given a choice of countries as is required by Chilean law and I never chose the United States of America as the country of my destination.

12. Your Petitioner believes that my abduction was conducted in violation of the Fourth and Fifth Amendments of the Constitution of the United States, The United Nations Charter and Treaties of the United States, as recently set forth by the United States Court of Appeals for the Second Circuit in *United States v. Toscanino* (Docket No. 73-2732 decided May 15, 1974.)

13. Your Petitioner has made no previous application to this Court for the Writ of Habeas Corpus on these or on any other grounds.

WHEREFORE, Petitioner prays for a Writ of Habeas Corpus returning Petitioner to his "status quo ante", and for an Order of the Court divesting itself of jurisdiction over the person of the defendant, and for such other and further relief as to the Court may seem just and proper under these circumstances.

DATED: New York, New York
October , 1974

s/ FRANCISCO GUINART

Sworn to before me this
2nd day of October, 1974

.....

2. Affidavit of Special Agent Charles W. Cecil, Jr.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

73 Cr. 1094

UNITED STATES OF AMERICA

—v.—

FRANCISCO GUINART,

Defendant.

State of New York
County of New York
Southern District of New York ss.:

CHARLES W. CECIL, JR., being duly sworn, deposes and says:

1. I am a Special Agent for the Drug Enforcement Administration, United States Department of Justice and have been so employed since June 29, 1963. Since August 1972, I have been assigned to the Santiago, Chile District Office of the Drug Enforcement Administration. Previously I served five months at the Buenos Aires Argentina office of the Drug Enforcement Administration, four months at the Panama office of the Drug Enforcement Administration, and two years, two months in Washington, D. C. I am familiar with the matter of Francisco Guinart, because of my presence in Santiago, Chile for the last two years, two months.

2. Upon information and belief the circumstances of Guinart's arrest in Chile, expulsion from Chile and transfer to the United States are the following:

3. On or about September 22, 1973, the Overseas Operations Section of the Drug Enforcement Administration, Washington, D. C. cabled the Santiago District office of the Drug Enforcement Administration that the United States Attorneys in the Eastern and Southern Districts of New York were prepared to prosecute for narcotics violations in New York a number of Chilean defendants including Francisco Guinart. On or about October 5, 1973, a provisional arrest request was submitted to the Chilean government for a number of defendants, including Francisco Guinart. On October 31, 1973, Francisco Guinart was arrested by Chilean authorities in Chile. On December 3, 1973, orders of expulsion from Chile for Francisco Guinart and eight other defendants were signed by the Chilean authorities. (A copy of the order of expulsion and a translation thereof is attached hereto as Exhibit A.)

4. On December 4, 1973 at 11:30 p.m., the Chilean Civil Police under the direction of Inspector Jamie Vasquez transferred Guinart, and eight other defendants, to Pudahuel International Airport in Santiago, Chile. Special Agent George Frangullie Special Agent-in-Charge, the Santiago District Office of the Drug Enforcement Administration was present when the defendants were transferred to the airport. I was not present at that time.

5. At 2 a.m. on December 5, 1973, Special Agent Frangullie and six Chilean police officials escorted the nine fugitives aboard the LAN Chile Flight #142, non-stop from Santiago to New York. Their flight arrived in New York at approximately 10:15 a.m. on December 5, 1973, and the nine prisoners were immediately turned over to agents of Region 2 (New York) Drug Enforcement Administration to be transported to Federal Court for arraignment.

CHARLES W. CECIL, JR.
Special Agent
Drug Enforcement Administration

Sworn to before me this
day of October, 1974."

3. Oral Argument on the Motion Before Judge Gagliardi on October 8, 1974

"GOVERNMENT ATTORNEY: It is the Government's position that on the basis of these papers, your Honor, no issue has been raised which requires a hearing. There has been no suggestion that Americans were involved in any illegal activities with respect to this defendant at all.

All there is is that—I think the major thrust of the papers is that somehow this procedure was not legal under Chilean law in that the defendant wasn't given the opportunity to choose which country he was to go to.

However, it is our position that, under the law of Toscanino, under the circumstances, with the existence of the expulsion decree, that there is no inquiry by the Court into whether or not the circumstances of Chilean law were correctly or incorrectly applied, and therefore, it is the Government's position on the basis of this affidavit that there is no showing made at all which even requires a hearing.

THE COURT: Mr. Lawler (Attorney for Guinart) I read the papers the same way here, that the only issue here is whether or not, assuming that the expulsion order is improper under Chilean law, that all the United States did here was request his expulsion; that he was expelled by a decree of a Chilean government of junta; was placed on a plane with Chilean officials, and also accompanied by an American agent; when he arrived on American soil was turned over to an American agent.

I think those facts are the situation. Is that right, Mr. Littlefield (Government Attorney)?

GOVERNMENT ATTORNEY: Yes, they are, your Honor.

THE COURT: I think under those circumstances this affidavit on this motion does not raise sufficient facts or offer of proof to warrant a hearing.

ATTORNEY FOR GUINART: Your Honor, I believe it does, because I think the affidavit goes beyond the description of it by Mr. Littlefield. The affidavit submitted by the defendant in essence alleges that Federal agents of the United States participated with representatives of the Chilean government to in effect forcibly bring Mr. Guinart to this country against his will, and that at all stages of the proceeding the American officials participated in this.

As I read the affidavits submitted by the Government, they apparently acknowledge that a provisional arrest request was submitted to the Chilean government.

Now, I don't know what a provisional arrest request is, but I think we should find out what that is. And thereafter, even assuming that the Chilean government arrested him, the sole purpose of the arrest, as I understand it, is at the request of the American Government. There is no allegation of violations of Chilean law contained anywhere in the Government's affidavit; so that the arrest, when it was made, was apparently strictly at the request of the American Government.

If that is true, this entire proceeding from beginning to end was something orchestrated by agents of the United States Government up to having him put on a plane against his will and arriving in this country.

It seems to me that it goes beyond this particular individual, that is, while this situation developed and it related only to Mr. Guinart, it might be said that this is an isolated incident. It appears from what Mr. Guinart states in his affidavit that there were a number of other people who were in precisely the

same situation, that is, who appear to have been arrested at the request of the United States Government, who suddenly find themselves being placed on a plane against their will and flown to the United States; that there is a course of conduct engaged in by United States agents to bring individuals to this country not under proper procedures, and as such, I would maintain pursuant to the Toscanino decision, that they have been denied due process, because there has traditionally been a procedure for the extradition of individuals from one country to another under international law and under United States law.

This appears to me to be a deliberate attempt on the part of representatives of the Government to shortcut that procedure.

THE COURT: Well, I read the affidavit the way I read it. On that basis I don't believe we have to have a hearing. I think I am correct on the law. If I am not, why, I am in error as to the effect the application or the request to Chile to expel certain people, and I don't believe I can look beyond that; and I must accept the fact that he is here, and not look beyond that to what was done in Chile, because then I would be interpreting Chilean law and trying to reverse Chilean decisions, which I don't think I have the authority to do under the law as it presently stands.

If a change is to be made in that law, I think it has to come from a higher authority than myself. A district court must follow, as I see it, the law as it presently exists, and that is the way I read it today, Mr. Lawler.

ATTORNEY FOR GUINART: Your Honor, when you indicate you are applying the law, are you talking about United States law?

THE COURT: Yes, yes, yes, Toscanino and all that preceded it, which I perceive to be the current law in the United States.

ATTORNEY FOR GUINART: Your Honor, I might agree with your Honor's analysis if in fact there was no participation by Government agents or representatives in this. In other words, if what we had here was strictly activity by the Chilean government pursuant to their laws whereby a certain result came about, I think the Court might be justified in saying that it cannot interpret Chilean law to comment upon the activities of the Chilean government, if that is all that is involved.

I think once the agents of the United States become involved, and indeed initiate the entire process, then I think the Court must review it and determine whether the rights of this individual have been violated prior to the time that he is required to stand trial.

THE COURT: All I can say is that I also see that Judge Mishler and Judge Weinstein in the Eastern District have interpreted the law the same way that I have now interpreted it, and under these circumstances the application is denied.

ATTORNEY FOR GUINART: Your Honor, may I just add one other matter just for purposes of the record?

THE COURT: Yes.

ATTORNEY FOR GUINART: Which your Honor has indicated the result. I think that by reason of the affidavit submitted which indicates that the agent made a request or the United States Government made a request on about October 3, 1973 for a provisional arrest request, a provisional arrest request was submitted to the Chilean government; that by the submission of that request, the United States Government deliberately sought to put in motion a certain procedure; I am not too clear, because I have never seen the phrase before, what procedure they sought to put in motion, but it would indicate a familiarity by the American Government with the proper Chilean procedure.

I think it is also clear, at least it has been translated for me, the relevant Chilean authorities, which indicate that on an order of expulsion, assuming that such a procedure is proper, that the individual to be expelled is to be freely given the choice of countries to which he is to be expelled.

I think the affidavit submitted by my client states that he clearly did not request to be expelled to the United States, and I think that will be found to be true of all the other individuals who arrived here.

I think if the United States Government initiated a procedure in Chile, then they have an obligation to see that it is not violated for purposes of short-cutting a defendant's rights.

THE COURT: I have a great deal of difficulty with the law too the way it is, but nonetheless, my difficulty is overcome by what I understand the authorities to be; that I can't look to that, and must accept the fact that he is here present now, and absent some showing or credible proof, as Toscanino sets forth, under those circumstances the application is denied."

ATTORNEY FOR GUINART: Your Honor, if I might make the application for a hearing—you have not ruled on my motion——

THE COURT: The application for a hearing is denied. Your motion is denied."

ARGUMENT

The Trial Court properly denied without a hearing the motion to divest itself of jurisdiction over Guinart.

Guinart contends that the Trial Court erred in denying without an evidentiary hearing his motion to divest itself of jurisdiction over him. In his brief he concedes that he has not alleged United States Government involvement in

the torture in Chile which he described in his affidavit, but argues that since he alleged and the Government acknowledged in its reply affidavit that the United States Government requested his arrest and detention in Chile in order to have him brought to the United States, and was aware of his detention, he was therefore, under *Toscanino*, entitled to an evidentiary hearing on his motion. Judge Gagliardi's decision to deny the motion and not to grant the hearing was proper under *Toscanino* and finds full support in this Court's two subsequent opinions in *United States v. Lira*, 515 F.2d 68 (2d Cir. 1975), and *United States ex rel. Lujan v. Gengler*, 510 F.2d 62 (2d Cir. 1975), which are dispositive of this appeal.

This Court's remand for an evidentiary hearing in *Toscanino* turned on whether the defendant could provide credible evidence to support his claim of *direct* participation by the United States Government in violating his constitutional rights, including: (i) torture participated in by an agent of the Bureau of Narcotics and Dangerous Drugs and known while in progress to the United States Attorney's Office; (ii) illegal wiretapping of the defendant in Uruguay financed by United States agents; (iii) abduction of the defendant from Uruguay to Brazil by paid United States agents operating in Uruguay without the knowledge of the Uruguayan government. Guinart, unlike *Toscanino*, does not even allege such participation in illegal acts by agents of the United States Government, let alone present credible evidence to support such allegations.

Guinart's claims are twofold: first, that by requesting his arrest the United States is responsible for his subsequent mistreatment by the Chileans; and second, his expulsion from Chile and transfer to the United States were carried out in violation of Chilean law. Both of these claims were specifically considered and rejected by this Court in *United States v. Lira*, *supra*, 515 F.2d at 71-72, which concerned activities by United States agents identical to the activities alleged here:

"Although no direct involvement by the Government in Mellafe's (the defendant's true name) torture could be proven, appellant nevertheless suggests that the Government was 'vicariously responsible' for his torture, since the DEA requested Mellafe's arrest and expulsion and thus 'placed the matter in motion.' This argument must be rejected. Unlike *Toscanino*, where the defendant was kidnapped from Uruguay in defiance of the laws of the country, here the Government merely asked the Chilean Government to arrest and expel Mellafe in accord with its own procedures. This action can hardly be faulted. Agencies such as the DEA presumably must cooperate with many foreign governments in seeking transfer to the United States of violators of United States law. The DEA can hardly be expected to monitor the conduct of representatives of each foreign government to assure that a request for extradition or expulsion is carried out in accordance with American constitutional standards. Moreover, no purpose would be served by holding the Government responsible for the actions of Chilean police. Our decision in *Toscanino* was grounded on the same principle which underlay the Supreme Court's adoption of the exclusionary rule in *Mapp v. Ohio*, 367 U.S. 643 (1961). In both cases the purpose of the rule was to deter police misconduct by barring 'the government from realizing directly the fruits of its own deliberate and unnecessary lawlessness in bringing the accused to trial,' 500 F.2d at 272. Hopefully divestiture of jurisdiction over a defendant forcibly abducted by our Government from a foreign jurisdiction would inhibit our Government from engaging in similar unlawful conduct in the future. However, where the United States Government plays no direct or substantial role in the misconduct and the foreign police have acted not as United States agents but merely on behalf of their own government, the imposition of a penalty would only deter United States representatives from making a lawful request for the de-

fendant and would not deter any illegal conduct. Since our Government has no control over the foreign police, extension of *Toscanino* to the present case would serve no purpose.

Appellant's final argument is that Chilean law was violated when the Chilean Government issued an expulsion decree directing that he be sent to the United States. However, since Chile was aware of the alleged violations on the part of its own officials and did not object or take remedial action, this argument is of no avail to appellant. See *United States ex rel. Lujan v. Gengler, supra*, 510 F.2d at 68. Furthermore, in dealing with a foreign government, the DEA agents were entitled to rely on that government's interpretation and enforcement of its own laws. The United States Government did not owe appellant any obligation to enforce his asserted right under Chilean law." *

In his brief, Guinart argues that his case is different from *Lira* because he submitted documents reflecting that his arrest and detention were the result of a specific request from the United States Government (Guinart Brief, page 10). However, as this Court's opinion in *Lira* makes clear,

* In *Lira* an evidentiary hearing was held. In his affidavit the defendant had alleged he had heard English spoken during the time of his torture in Santiago, thereby implying that United States agents had been present at the torture. This allegation, if proved, might have entitled him to relief under *Toscanino*. At the evidentiary hearing, however, the defendant was unable to substantiate this claim or identify the English-speaking persons present during the torture. Charles Cecil, one of the DEA agents in Santiago, testified that neither he, nor Frangulis, another DEA agent in Chile, had seen the defendant before he was placed aboard the plane for New York or been aware of the activities of the Chilean police other than the arrest itself. Guinart's claim that an American was present at the arrest does not require a hearing because there was no allegation that the American was present during the subsequent torture.

Lira was also arrested at the request of DEA, the United States Government also requested an expulsion order for him, and a DEA agent accompanied him on the plane to the United States.

Since the defendant has alleged no facts which, if proved, would entitle him to relief, no evidentiary hearing is necessary. *United States v. Toscanino*, *supra*. Cf. *Dalli v. United States*, 491 F.2d 758, 760 (2d Cir. 1974) (petition pursuant to 28 U.S.C. Section 2255); *United States v. Culotta*, 413 F.2d 1343, 1345 (2d Cir.), *cert. denied*, 396 U.S. 1019 (1969) (motion to suppress).

CONCLUSION

The judgments of conviction should be affirmed.

Respectfully submitted,

PAUL J. CURRAN,
*United States Attorney for the
Southern District of New York,
Attorney for the United States
of America.*

BANCROFT LITTLEFIELD, JR.,
MICHAEL B. MUKASEY,
*Assistant United States Attorneys,
Of Counsel.*

AFFIDAVIT OF MAILING

State of New York }
County of New York }

Robert Elliott, being duly sworn,
deposes and says that he is employed in the office of
the United States Attorney for the Southern District of
New York.

That on the 11th day of August, 1975
he served **two copies of the** within brief
by placing the same in a properly postpaid franked
envelope addressed:

McGuire & Lawler, Esqs.
630 Fifth Avenue
New York, NY 10020

And deponent further says that he sealed the said en-
velope and placed the same in the mailbox drop for
mailing outside the United States Courthouse, Foley
Square, Borough of Manhattan, City of New York.

Robert Elliott

Sworn to before me this

12th day of August, 1975

Lawrence Mason

LAWRENCE MASON
Notary Public, State of New York
No. 03-2572560
Qualified in Bronx County
Commission Expires March 30, 1977